

# Völkerrechtsblog

Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler\*innen

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INTERVIEW

## Law as a site of politics (Part I)

An interview with Hilary Charlesworth

MAREIKE RIEDEL — 15 February, 2016



📷 Photo provided by RegNet

Hilary Charlesworth is best known for her work on feminist theory and international law, however her intellectual curiosity extends far beyond this – for example she recently explored the role of rituals and ritualism in human rights monitoring and in 2011 she was appointed judge ad hoc of the International Court of Justice for the Whaling in the Antarctic case. In 2015 Völkerrechtsblog had the pleasure to meet with Hilary Charlesworth in her sunny Canberra office and talk with her about the old and new boundaries of international law and what feminism in international institutions has in common with space food.

*This is the first part of the interview. Read the second part [here](#).*

**Do you still remember your first encounter with international law or how you became interested in international law?**

I was quite miserable studying law and I kept thinking I should drop out, but for one reason or another I never did. In my final year of law school I enrolled in international law and it was the very first law subject that I engaged with immediately. I think that was because it was so closely tied to politics. I studied at the University of Melbourne Law School, a very conservative law school in the 1970s, and we were essentially told by the lecturers – although they never put it quite so explicitly – that law is different to politics. When you got to international law however, you couldn't tell that story anymore, because they were so obviously connected. At the end of the year I was involved in the Jessup Moot Court, which really cemented my interest in international law. In those days in Australia there wasn't much competition and my team went as the Australian team

to Washington to compete. The topic of the moot was outer space law, and at that time I thought it was like a parachute that allowed me to jump out of the dreary, grinding law degree.

**Why did you decide to go to academia and not into practice?**

After I did my articles of clerkship I went to work for a judge in the High Court here in Australia and I loved watching the process of legal argument. There were a couple of really interesting cases in international law in front of the High Court at that time. I went off to study in America with the idea that I would come back and be a barrister. But the experience of being taught really well in the US and listening to and engaging with some brilliant teachers changed that. My teachers at Harvard were using styles of teaching that I had never encountered in Australia, perhaps a more Socratic, discussion based style. This was a style of teaching that treated students as adults who have done their reading so the lecturers didn't need to just spoon feed it to you, which was the standard way to teach law in Australia in the 1970s. While studying in the US I went as an intern to the UNHCR in Geneva because I thought this could be the sort of thing I wanted to do. But by that stage I had become excited enough about the process of teaching to think that this might be for me.

**You have written extensively on feminist approaches to international law and on women's rights – how did you get into that topic?**

I feel as if most things I have done in my career is accidental – without planning. I am not proud of this, but I didn't have

much interest in feminism, even at university. I came from a very large family, five girls, two boys – and I went to an all-girls school. My parents were very democratic, my father did a lot of housework, which was unusual in those days. I always felt that there were the same expectations and possibilities for the girls in my family. The first time I thought that there was a problem was when I started in legal practice. There were all these little things at the law firm that I was asked to do that the men weren't, for example to go and buy the lunch of the senior partners. At first I was very dutiful and dedicated and just did it. But then I started to wonder why it was only me who was doing this and not the other male articulated clerk. I remember he said to me that he just would not do such a task, and I slowly started to see some of these patterns of discrimination against women. In those days, there were almost no senior women lawyers or judges. At the time I applied for my articles we did not have anti-discrimination legislation and it was okay to ask in job interviews whether women had a boyfriend, or intended to have children. Of course, the men would never be asked this and today it would be illegal to ask any prospective employee such questions. I think the sexism was really one of the reasons why I didn't enjoy legal practice but at the time I didn't think that there was any theory behind it.

### **And how did you get into the theory?**

When I was at Harvard Law School there were some inspiring people working with feminist theories in law like Frances Olsen, who is now at UCLA and was then doing her SJD at Harvard. She gave this brilliant seminar, which later became an article in the Harvard Law Review called "The Family and the Market". This was a kind of epiphany for me and I became very interested in feminist questions. For a

while I didn't think that feminist questions could apply to international law on the basis that international law is all about the state. It wasn't until I got back to Australia as a young academic in the late 1980s that I put them together. My journey into feminist theory in international law was really based on friendship, in particular my friendship with Christine Chinkin and Shelley Wright, who were both teaching in Australia when I met them at a conference. One day we decided to propose a paper for the Annual meeting of Australian international lawyers on this topic. We really thought that our colleagues would think this was ridiculous and wouldn't allow us on the programme. But the person in charge of the programme, Don Greig, said: "Great! Go ahead". We were then in panic because we actually didn't know what to say. This was before the Internet and Christine and Shelley were in Sydney, I was in Melbourne and we divided up the topic, talking on the phone a lot. Then we presented the paper that eventually became an article in the *American Journal of International Law*, [the Feminist Approaches article](#). That's how we got started – it's not a very intellectual story and it was almost because we wanted to provoke our colleagues. Luckily, these colleagues opened the door and made us think it through. Of course, looking back at these things now I think how terribly simplistic it was and there is a lot that I want to criticise today, but that's really how it came about.

### **What were the reactions when you introduced this topic to international lawyers?**

There was a whole range of interesting reactions. At the negative end, the reaction was "That's ridiculous. You are completely muddling up law with a political project. You are debasing the law by having this sort of analysis." I remember

sitting in some formal dinner next to a quite senior person in international affairs and when I told him about the topic he roared with laughter and said I must be joking. Then there were people who engaged with it but found it intellectually suspect. An example of this would be Fernando Tesón, a quite conservative international lawyer, who took on our article in the Virginia Journal of International Law and argued that we were wrong on many counts. Even though I did not agree with his critique, he had at least taken our arguments seriously. Even people from the critical legal tradition were uncomfortable with the article because, they would say, “it’s not just a critique, it’s a political project and that’s just not what international law should be used for.”

### **So what is the trouble with feminist approaches to international law?**

I think that the trouble with a lot of feminist work in international law is that the ideas and the discussions take place in quite a small group and there is very little engagement with feminist ideas from people that are not already part of this community. I guess this is why some critical international law scholars are sceptical of this project. They acknowledge that feminism has had some impact in international law, but think it has really run out of ideas. Of course, we know that in international institutions some version of feminism – to me an exceptionally limited version of feminism – has achieved some form of acceptance. You can hear the UN Secretary-General making a worthy speech about the inclusion of women on International Women’s Day and you may have this idea of gender mainstreaming being picked up within the UN. There are certainly some programmes that appear to take up feminist ideas but I do not see them as very successful

despite the rhetoric and despite the adoption of United Nations Security Council Resolution 1325 in 2000. I actually think that the problem is having such a limited, fractured idea of feminism. It's a bit like when astronauts go into space and they take with them this pre-packaged, powdered food. I see the sort of feminism in international institutions as a bit like space food – they have taken out all the moisture, they reduced it and taken out much of the texture and the freshness. There has not been enough attention to the differences in women's lives and situations across the globe or how international standards can be used to keep women in their place. On the other hand, some scholars and NGOs like the Women's International League for Peace and Freedom say that feminist claims have been galvanising at the grass roots level. So I think this whole process is a mixed story with some success and plenty of failures, too.

**I wonder whether we can blame feminism for this. Isn't it more the institutions or the people in these institutions that are reluctant to implement these ideas more radically?**

I agree with you, and of course such a process happens with a lot of ideas. Just look at development. You put this concept into an institution it can become a very weak, desiccated, powdered version. In the case of feminism, it readily becomes a count of female heads. I don't see it as the fault of feminism but I do think that feminists have to really think about how we can get a more radical message through. Of course, at the moment there is a very interesting process under way. Radhika Coomaraswamy is preparing a major report for the UN for this year on the 15th anniversary of Security Council Resolution 1325 and from her public speeches we can see she is taking into account a lot of this

criticism and trying to push the UN a bit further. The other issue is that feminists have to be more strategic about the way that their ideas are being picked up.

### **Do you have an example?**

Take the example of gender mainstreaming. That has been reduced in institutional terms to a very limited understanding. You just add women and stir and hope for the best, but you are not really changing the institutions. We need to be more critical and say where the gaps are, for example in the language used in the Security Council resolutions on women, peace and security. We have to scrutinise these words and not just congratulate the UN for using them. It's about the way you define these words and put them into action. Feminists have maybe been too satisfied with seeing a feminist vocabulary appear in international institutions without paying enough attention to the limited consequences it has.

### **Maybe it just takes more time to change institutions. You said that feminism is a political project but isn't preserving the status quo not also a political project because it serves the interests of some groups?**

Of course! If you have the benefit of the status quo you tend to say that it has become like this because it is a good idea. You don't acknowledge the politics. But feminism, like other critical approaches, is very attentive to the politics but also to the politics of keeping things as they are. The great mythology about law, which is still the way law is taught in Australian law schools, is that it offers something impartial and apolitical, despite all the work over many decades that challenges this position. You can of course make an



argument for law, for the rule of law, but you have to acknowledge the political position that you are coming from. As soon as you are willing to acknowledge something as political, then there is the possibility of change. I don't understand why people want to hide the political ramifications of particular positions that they take, but at least in Australia it is a very standard move. It was international law that initially allowed me to see the law, including domestic law, in perspective, to see the law as a site of politics. And feminism reinforced this message.

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